# IOWA STATE UNIVERSITYFACILITY AND EQUIPMENT USE AGREEMENT(LABORATORY)

This Facility and Equipment Use Agreement (“Agreement”) is entered into by Iowa State University of Science and Technology, on behalf of its <ISU DEPARTMENT > (“ISU”), and <CUSTOMER NAME > (“Customer”). The Effective Date of this Agreement shall be the date on which the last party signs this Agreement. Attachments A, B and C are incorporated into this Agreement by reference.

## Permission to Use Laboratory Space. ISU grants Customer permission to use the Laboratory Space during the Use Period for conducting research as described in the Laboratory Use Details in Attachment A. Any utilities or services to be provided by ISU are set forth in the Laboratory Use Details.

## Permission to Use Equipment. ISU grants Customer permission to use the Equipment as described in the Laboratory Use Details. Customer may not, without the consent of ISU, install any accessories or devices on the Equipment. Customer shall allow only its employees to use the Equipment. Customer shall ensure that Customer employees who will use the Equipment (i) complete any training required by ISU and (ii) operate the Equipment in compliance with the training and instructions provided by ISU and applicable Laws (as defined below). ISU employees may observe Customer’s use of the Equipment; however, Customer acknowledges that ISU is not responsible for supervising Customer’s use of the Equipment. Such supervision is the responsibility of Customer. Title to the Equipment is and shall remain with ISU.

1. **Customer Material, Equipment and Property.** ISU must approve all material and equipment brought into the Laboratory Space by Customer. Customer shall disclose in the Laboratory Use Details whether the material is a hazardous material (as defined below) and any known hazards and risks associated with the materials. Customer shall also disclose in the Laboratory Use Details whether any of the material or equipment Customer intends to bring into the Laboratory Space is an item on the Munitions List or the Commerce Control List other than EAR99 items. The material and equipment must be capable of being safely used and operable in the Laboratory Space. Customer shall ensure that its employees operate, maintain, and use the materials and equipment safely. ISU shall not be responsible for material, equipment, or other property belonging to Customer and its employees, contractors, or guests (“Customer Property”). Customer is encouraged to obtain appropriate property or installation floater insurance against risk of loss to Customer Property. Customer and its insurers waive all rights of subrogation against ISU for such losses.

## Financial. Customer shall timely pay ISU the fees set forth in the Laboratory Use Details. If any payment is not received from Customer when due, ISU may impose a finance charge up to the maximum rate allowed by law, refer the unpaid amount for collection, and/or terminate this Agreement. Customer must pay all collection costs and legal fees if ISU must take action to recover any past due amounts.

## Contact Persons. The individuals serving as the primary contacts for the parties to this Agreement are set forth in the Laboratory Use Details.

## Compliance with Laws. Customer shall comply, and shall require its employees, contractors, and guests to comply, with all applicable laws, regulations, ordinances, ISU policies, and rules for the Laboratory Space (“Laws”). ISU’s policies are set forth in Chapter 681-13 of the Iowa Administrative Code and at <http://www.policy.iastate.edu/>. ISU policies prohibit or impose restrictions on the following on ISU property: (a) smoking; (b) alcohol; (c) controlled substances; (d) weapons, such as firearms, knives, tasers, explosives and archery equipment; (e) fireworks and highly flammable materials; (f) gambling; (g) solicitation; (h) animals; and (i) motor vehicles on ISU sidewalks and outdoor green space areas. Customer shall not permit anyone under the age of 18 into the Laboratory Space. ISU may inspect the Laboratory Space, access the Laboratory Space to perform maintenance, enforce applicable Laws, and remove any person who is disruptive to ISU’s operations or where ISU reasonably believes such person is acting in an unsafe manner or may cause or has caused harm to people, the Laboratory Space, the Equipment, or other property.

1. **Hazardous Materials.** Customer shall not receive, store, or otherwise handle any Hazardous Substance (as defined below) in the Laboratory Space without the prior written consent of ISU’s Environmental Health and Safety division (“EH&S”). EH&S may require additional training as a condition of its consent. If EH&S consents, in no event shall such permitted Hazardous Substance exceed the maximum quantity allowed for the Hazardous Substance or exceed Biosafety Level 2 as set forth in Attachment B. Customer shall receive, store, use, and otherwise handle any permitted Hazardous Substance in compliance with all applicable Laws. For purposes of this Agreement, a “Hazardous Substance” includes any substance that: (i) is listed in Attachment B; (ii) is or contains asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum or petroleum derived substances or wastes, radon gas, or related materials; (iii) requires investigation, removal, or remediation under any Laws or is defined, listed, or identified as a “hazardous waste” or “hazardous substance” under any Laws, or (iii) is toxic, explosive, corrosive, flammable, infectious, recombinant or synthetic nucleic acid molecules, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is regulated by any governmental authority or Laws.
2. **Removal of Chemical, Biological and Radiological Waste.** Unless otherwise agreed in writing, Customer shall allow EH&S to manage any chemical, biological and radiological waste, and Customer shall use ISU’s hazardous waste contractor. EH&S will invoice Customer for any such needed services, and Customer shall pay such invoices within 30 days of receipt.
3. **Training; Protective Gear.** Customer shall ensure that its employees assigned to work in the Laboratory Space complete the following EH&S core lab classes within 30 days of the employees engaging in activities within the Laboratory Space: Laboratory Safety: Core Concepts; Emergency Response Guide Video; and Fire Safety and Extinguisher Training (<http://www.ehs.iastate.edu/publications/handouts/labcurriculum.pdf>). Any additional required training is set forth in the Laboratory Use Details. Customer shall arrange such training with EH&S and pay any applicable charges. Customer may substitute training obtained from other providers only upon written approval from EH&S. Customer shall provide all required protective gear for its employees assigned to work in the Laboratory Space unless the parties state otherwise in theLaboratory Use Details.
4. **Vacating Laboratory Space.** Customer shall vacate the Laboratory Space and remove all property belonging to Customer and its employees, contractors, and guests (“Customer Property”) before the end of the Use Period. ISU may remove, dispose of, and store any Customer Property that Customer fails to promptly remove. Customer shall pay all expenses associated with such removal, disposal, and storage.
5. **Damages.** Customer shall leave the Laboratory Space and ISU property in as good condition as they were in immediately prior to the Use Period, reasonable wear and tear excepted. Customer shall be responsible for any damage to or loss of ISU property caused by Customer or Customer’s employees, contractors, or guests. Customer shall notify the ISU Contact immediately of any such damage or loss. ISU may repair or replace the damaged or lost ISU property. In such event, ISU will charge Customer for the costs incurred by ISU for the repair or replacement.
6. **Release. I**SU provides the Laboratory Space and its equipment and services “AS IS”. Customer assumes any and all risk of loss, damage, and liability that Customer may sustain while using the Laboratory Space. ISU assumes no responsibility or liability for any Customer Property. IN NO EVENT SHALL ISU BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES.
7. **Indemnification.** Customer shall indemnify and hold harmless the State of Iowa, the Board of Regents-State of Iowa, Iowa State University, and their officers, employees, and agents from all claims arising from the acts or omissions of Customer or Customer’s employees, contractors, or guests or arising from Customer’s use of the Laboratory Space, except those resulting from the negligence of any ISU employee or agent.
8. **Insurance.** Customer shall maintain the insurance coverage set forth in Attachment C throughout the Use Period. Customer shall submit any required certificates of insurance and endorsements to the ISU Contact no later than 30 days prior to the start of the Use Period. ISU may prohibit Customer from entering ISU property until ISU receives confirmation that the required insurance has been obtained. If Customer or Customer’s contractors fail to carry the required insurance, ISU may terminate this Agreement.
9. **Term; Termination.** The term of this Agreement shall commence on the Effective Date and expire at the end of the Use Period, unless earlier terminated as set forth below. In the event of termination, Customer shall remain obligated to pay any fees through the date of termination.

	1. **Immediate Termination By ISU.** ISU may terminate this Agreement immediately upon notice to Customer if: (a) Customer fails to timely pay ISU; (b) Customer fails to carry the required insurance set forth in Attachment C; or (c) if Customer or Customer’s employees, contractors or guests (i) disrupt ISU’s operations or other’s use of other ISU property, (ii) act in a manner ISU reasonably believes to be unsafe or that may cause or has caused harm to persons, the Laboratory Space, the Equipment or other property, or (iii) violate applicable Laws.
	2. **Termination For Cause.** Either party may terminate this Agreement upon notice to the other party if the other party fails to cure a material breach of this Agreement within ten days of receiving notice of such breach from the non-breaching party. The foregoing shall be in addition to any other remedies to which the party is entitled.
	3. **Force Majeure.** ISU may terminate this Agreement upon notice to Customer if a Force Majeure Event occurs. A “Force Majeure Event” means an event beyond the reasonable control of ISU that prevents or hinders ISU from making the Laboratory Space or Equipment available to Customer or that may endanger the health or safety of those who use the Laboratory Space or Equipment.
	4. **Without Cause.** Either party may terminate this Agreement for any reason by providing notice to the other party not less than 60 days prior to the termination date.
10. **Publicity.** The parties shall not use the name or trademarks of the other party or the name of any of the other party’s employees in any publicity or advertising without the prior written consent of the other party. Unless express written permission has been granted, Customer shall not represent or imply that it is affiliated with ISU or that Customer’s activities or products are endorsed or approved by ISU.
11. **Notices.** Notices relating to this Agreement shall be in writing and shall be deemed to have been given: (i) upon hand delivery; (ii) the next business day after sending by a nationally recognized overnight carrier with written confirmation of receipt; or (iii) if sent by email, when the recipient acknowledges having received the email. Customer shall deliver notices to the ISU Contact; ISU shall deliver notices to the Customer Contact.
12. **Miscellaneous.** This Agreement is the entire agreement between the parties. All terms and conditions in other instruments, including purchase orders issued by Customer, are void. This Agreement supersedes all prior agreements between ISU and Customer for use of the Laboratory Space for the Event. No modification of this Agreement will be effective unless it is in writing and signed by the parties. A failure to enforce an obligation or exercise a right or remedy under this Agreement will not preclude a party from enforcing the obligation or exercising the right or remedy on other occasions. If a court determines a provision of this Agreement is unenforceable, the provision shall be amended to the minimum extent necessary to render it enforceable. If such amendment is not possible, then the provision shall be disregarded and the remainder of this Agreement shall remain in effect. If, however, amending or disregarding the provision deprives a party of a material benefit intended to be conferred by this Agreement, then this Agreement shall be deemed terminated. The terms of this Agreement that, by their nature, would continue beyond the termination of this Agreement will survive termination. This Agreement may not be assigned or transferred by either party without the prior written consent of the other party. The law of the State of Iowa, without giving effect to its conflict of law rules, governs all adversarial proceedings brought by one party against the other party arising from this Agreement. The parties shall institute adversarial proceedings in a court of competent jurisdiction in the State of Iowa**.**

*Signature page appears on following page*

**SIGNATURES**

Each party represents and warrants that the person executing this Agreement on its behalf is authorized to do so. The parties consent to this Agreement being executed in any number of counterparts and delivered by electronic transmission in PDF format. The parties also consent (if applicable) to the use of electronic signatures in connection with the signing of this Agreement. The parties agree the electronic signatures shall be legally binding with the same force and effect as manually executed signatures if they are made using a technology designed for electronic signatures (e.g., DocuSign, Adobe Sign).

|  |  |
| --- | --- |
| **Customer**By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **Iowa State University of Science and Technology**By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ATTACHMENT A**

**LABORATORY USE DETAILS**

**Laboratory Space**

ISU shall provide Customer use of the following laboratory space:

**Research**

Customer may use the Laboratory Space for only the following research:

**Use Period**

Customer may use the Laboratory Space on the following dates during the following times:

**Equipment**

Customer may use the following ISU equipment in the Laboratory Space during the Use Period:

**Utilities and Services**

If checked, ISU shall provide the following utilities and services in connection with use of the Laboratory Space:

 Water

 Electricity

 Gas

 Janitorial

 Trash Removal

 Copier

 Telecommunications

 Parking

 Other (explain)

**Customer Materials and Equipment (description, known hazards/risks, Munitions List/ECCN):**

**Additional EH&S Training**

In addition to the training identified in Section 9, the following training is required:

**Fee and Payment Schedule**

Customer shall pay ISU the following fees in accordance with the following schedule for the use of the Laboratory Space and Equipment:

Customer shall contact EH&S for information about the payment of fees for training and chemical, biological, and radiological waste removal.

**Contact Persons**

|  |  |
| --- | --- |
| For ISU:Name:Address:Phone:E-Mail:  | For Customer:Name:Address:Phone:E-Mail: |

# ATTACHMENT B

**EXEMPT AMOUNTS OF HAZARDOUS MATERIALS PRESENTING A PHYSICAL HAZARD**

Maximum Quantities Per Laboratory

|  |  |  |  |
| --- | --- | --- | --- |
| **MATERIAL** | **CLASS** | **OPEN SYSTEM - SOLID LBS (Cu. Ft.)** | **OPEN SYSTEM**- **LIQUID GALLONS(LBS.)** |
| Combustible liquid1 | II | N.A. | 30 |
|  | III-A |  | 80 |
|  | III-B |  | 33003 |
| Cryogenic (flammable or oxidizing) | ---------- | N.A. | 10 |
| Explosives | ---------- | 1/44 | (1/4)4 |
| Flammable Solid | ---------- | Not Allowed | N.A. |
| Flammable Gas | ---------- | N.A. | N.A. |
| Flammable Liquid1,2Combination I-A, I-B, I-C | I-A | N.A. | 10 |
|  |  | N.A. | 30 |
|  |  |  |  |
|  |  |  |  |
| Organic Peroxide, unclassified, detonatable |  | 1/44 | (1/4)4 |
| Organic Peroxide | I | 11 | 11 |
|  | II | 101 | (10)1 |
|  | III | 251 | (25)1 |
|  | IV | 1001 | (100)1 |
|  | V | Not Limited | Not Limited |
| Oxidizer | 4 | 1/44 | (1/4)4 |
|  | 3 | 21 | (2)1 |
|  | 2 | 501 | (50)1 |
|  | 1 | 10001 | (1000)1 |
| Oxidizer – Gas1 |  | N.A. | N.A. |
| Pyrophoric | ---------- | 0 | 0 |
| Unstable (Reactive) | 4 | 1/44 | (1/4)4 |
|  | 3 | 11 | (1)1 |
|  | 2 | 101 | (10)1 |
|  | 1 | Not Limited | Not Limited |
| Water Reactive | 3 | 11 | (1)1 |
|  | 2 | 101 | (10)1 |
|  | 1 | 253 | (25)3 |
| Biosafety Level 3 & 4 Agents | None | None | None |

1Quantities may be increased 100 % in sprinklered buildings. When footnote 2 also applies, the increase for both footnotes may be applied.

2Quantities may be increased by 100 % when stored in approved storage cabinets, gas cabinets or exhausted enclosures. When footnote 1 also applies, the increase for both footnotes may be applied.

3The quantities permitted in a sprinklered building are not limited.

4Permitted in sprinklered buildings only. None is allowed in unsprinklered buildings.

**ATTACHMENT C**

**INSURANCE**

Customer must maintain, and require Customer’s contractors who will be on ISU property to maintain, the following insurance coverages.

**Commercial General Liability**

Form of Coverage Minimum Limits of Liability

1. Bodily injury and property damage $1,000,000 for each occurrence

$2,000,000 aggregate

1. Fire Legal Liability $100,000
2. Medical Expense Coverage $5,000
3. Contractual Liability Coverage
4. Independent Contractor’s Protective Coverage
5. Aggregate Limit per location / jobsite shall apply
6. Products/completed operations coverage for a period of two (2) years after acceptance of work
* Policy shall name Iowa State University; Board of Regents, State of Iowa; and the State of Iowa as additional insureds with respect to all operations and work hereunder and shall provide that such insurance applies separately to each insured against whom claim is made or suit is brought.
* Additional insured form CG 2026 or equivalent is required and must be attached to the certificate.
* This insurance afforded to additional insureds is to be primary of any other valid and collectible insurance including, but not limited to, any insurance ISU owns or self-insurance through the State of Iowa tort system.

 **Automobile Liability**

Insurance to include all owned, leased/rented, non-owned, hired, and employee non-owned vehicles.

Form of Coverage Minimum Limits of Liability

Bodily injury and property damage $1,000,000 combined single limit each accident

* For transportation of hazardous materials, the policy shall contain endorsement CA 9948 or equivalent pollution extension.

**Workers Compensation and Employers Liability**

Form of Coverage Minimum Limits of Liability

Coverage A State Statutory Limit

Coverage B - Employer’s Liability $100,000/$500,000/$100,000

* Policy shall include a Waiver of Subrogation in favor of Iowa State University; Board of Regents, State of Iowa; and the State of Iowa.
* Workers Compensation coverage is required for all personnel working on this Agreement. All of Customer’s employees, partners, members, officers and sole proprietors must be included.

**Excess Liability**

$2,000,000 each occurrence

$2,000,000 annual aggregate

* This coverage shall be in excess of the General Liability, Auto, and Employers Liability required limits.
* Any retained limit amount shall be the sole responsibility of the policy holder.
* A combination of primary and excess policies can be used to meet the overall limit requirement.

**General Terms:** Applicable to all coverages.

* ISU may require higher limits based on contract size, type and/or location.
* All companies shall be licensed to do business in the State of Iowa and have a minimum AM Best Rating of A-VII.
* A minimum of 30 days’ notice of cancellation shall be provided in the event of a policy cancellation or material change in coverage.
* Certificates must be issued and on file prior to the commencement of the Use Period.
* The purchase of any policy or adding ISU as additional insured shall not limit the defense of governmental immunity.
* Customer is responsible for determining if its contractors have the required insurance coverages. Verifying insurance compliance of sub-providers is the responsibility of Customer.
* Furnishing a certificate that does not meet these requirements does not amend nor alter the Agreement nor provide proof that Customer has met these requirements.

Customer must provide proof of coverage in the form of a certificate of insurance to the ISU Contact no later than 30 days prior to the start of the Use Period. The term of coverage must be in effect for the duration of the Use Period.